

1 NIAL E. LYNCH (CSBN 157959)
EUGENE S. LITVINOFF (CSBN 214318)
2 NATHANAEL M. COUSINS (CSBN 177944)
U.S. Department of Justice
3 Antitrust Division
4 450 Golden Gate Avenue
Room 10-0101, Box 36046
San Francisco, CA 94102
5 Telephone: (415) 436-6660

Original Filed Dec. 15, 2004

6 Attorneys for the United States

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA)

12 Plaintiff,)

13 v.)

14 T. RUDD CORWIN,)

15 Defendant.)

Case No. CR -4-0397 PJH

PLEA AGREEMENT

16 **PLEA AGREEMENT**

17 The United States of America and T. RUDD CORWIN ("Defendant") hereby enter into
18 the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal
19 Procedure ("Fed. R. Crim. P."):

20 **RIGHTS OF DEFENDANT**

21 1. Defendant understands his rights:

22 (a) to be represented by an attorney;

23 (b) to be charged by Indictment;

24 (c) to plead not guilty to any criminal charge brought against him;

25 (d) to have a trial by jury, at which he would be presumed not guilty of the
26 charge and the United States would have to prove every essential element of the charged
27 offense beyond a reasonable doubt for him to be found guilty;

28 (e) to confront and cross-examine witnesses against him and to subpoena

1 witnesses in his defense at trial;

2 (f) not to be compelled to incriminate himself;

3 (g) to appeal his conviction; and

4 (h) to appeal the imposition of sentence against him.

5 **AGREEMENT TO PLEAD GUILTY**
6 **AND WAIVE CERTAIN RIGHTS**

7 2. Defendant waives the rights set out in Paragraph 1(b)-(g) above. Defendant agrees
8 to have his sentence determined under the United States Sentencing Guidelines (“U.S.S.G.”) and
9 waives all constitutional challenges to the validity of the U.S.S.G. Defendant waives any right
10 he may have to have facts that determine his Guidelines fine and imprisonment ranges under the
11 U.S.S.G. (including any facts used to determine his offense level, volume of commerce, any
12 specific offense characteristic or other enhancement or adjustment under the U.S.S.G.) alleged in
13 an indictment and found by a jury beyond a reasonable doubt. Defendant also waives the right to
14 appeal the imposition of the sentence against him, so long as the sentence imposed is consistent
15 with the recommended sentence contained in Paragraph 8 of this Plea Agreement. Defendant
16 also waives the right to file any collateral attack on his conviction or sentence, including a
17 petition under 28 U.S.C. § 2255, at any time after he is sentenced, except for a claim that his
18 constitutional right to the effective assistance of counsel was violated. Further, pursuant to Fed.
19 R. Crim. P. 7(b), Defendant will waive indictment and plead guilty at arraignment to a one-count
20 Information to be filed in the United States District Court for the Northern District of California.
21 The Information will charge that beginning on or about July 1, 1999, and continuing until on or
22 about June 15, 2002, Infineon Technologies AG (“Infineon AG”), including its United States-
23 based subsidiary Infineon Technologies North America Corp. (“Infineon NA”), and co-
24 conspirators participated in a conspiracy in the United States and elsewhere to suppress and
25 eliminate competition by fixing the price of dynamic random access memory (“DRAM”) to be
26 sold to certain original equipment manufacturers of personal computers and servers (“OEMs”),
27 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The Information will further charge
28 that Defendant, an employee of Infineon NA and its predecessor, joined and participated in the

1 charged conspiracy during the period from on or about July 1, 1999, until on or about June 15,
2 2002.

3 3. Defendant, pursuant to the terms of this Plea Agreement, will
4 plead guilty to the criminal charge described in Paragraph 2 above and will make a factual
5 admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph
6 4 below.

7 **FACTUAL BASIS FOR OFFENSE CHARGED**

8 4. Had this case gone to trial, the United States would have presented
9 evidence to prove the following facts:

10 (a) For purposes of this Plea Agreement, the “relevant period” is that period
11 from on or about July 1, 1999, to on or about June 15, 2002. From July 1, 1999, to in or about
12 October 1999, Defendant was a Director of Customer Marketing and Sales for the Memory
13 Products Division of Siemens Microelectronics, Inc. From in or about October 1999 until
14 October 2000, Defendant had the same job title, but the name of his corporate employer changed
15 to Infineon NA. From in or about October 2000 to January 2002, the Defendant was Vice
16 President for Customer Marketing and Sales for Memory Products in North America for Infineon
17 NA. From in or about January 2002 to June 15, 2002, Defendant was Vice President of Sales,
18 Computing Segment, for Infineon NA. Infineon NA is an entity organized and existing under
19 the laws of Delaware and with its principal place of business in San Jose, California, and its
20 predecessor Siemens Microelectronics, Inc., was an entity organized and existing under the laws
21 of Delaware and with its principal place of business in San Jose, California. During the relevant
22 period, Siemens Microelectronics, Inc., was a wholly-owned subsidiary of Siemens AG, an
23 entity organized and existing under the laws of the Federal Republic of Germany (“Germany”),
24 with its principal place of business in Munich, Germany; Infineon NA was a wholly-owned
25 subsidiary of Infineon AG, an entity organized and existing under the laws of Germany, with its
26 principal place of business in Munich, Germany.

27 (b) DRAM is the most commonly used semiconductor memory product.
28 DRAM provides high-speed storage and retrieval of electronic information in personal

1 computers, servers, and other devices. In the course of his employment for Infineon NA and its
2 predecessor during the relevant period, Defendant was engaged in the sale of DRAM in the
3 United States and also directly supervised other employees engaged in the sale of DRAM in the
4 United States.

5 (c) During the relevant period, Defendant participated in a conspiracy in the
6 manner described below, which conspiracy existed in the United States and elsewhere among
7 certain DRAM producers and their officers and employees. The primary purpose of the
8 conspiracy was to raise the price of DRAM sold to certain OEMs. The conspiracy directly
9 affected these OEMs in the United States: Dell Inc., Hewlett-Packard Company, Compaq
10 Computer Corporation, International Business Machines Corporation, Apple Computer Inc., and
11 Gateway, Inc. In furtherance of the conspiracy, Defendant knowingly authorized, requested and
12 consented to the participation of one or more subordinate employees in the conspiracy in the
13 respects described below. The subordinate employees obtained from competitors the future
14 pricing information of the competitors for DRAM to be sold to certain OEMs. Defendant
15 understood that this competitor pricing information was sometimes obtained by the subordinates
16 in exchange for Infineon pricing information for DRAM. Defendant also authorized, requested
17 and consented to the subordinates providing this competitor pricing information to Defendant's
18 superiors, as Defendant himself sometimes did. Defendant knew that the consequence of
19 providing this information to Infineon's pricing decision-makers probably would be to stabilize
20 or raise the price of DRAM sold to certain OEMs.

21 (d) During the relevant period, DRAM sold by one or more of the
22 conspirators, equipment and supplies necessary to the production and distribution of DRAM, and
23 payments for DRAM, traveled in interstate and foreign commerce. The business activities of
24 Defendant and his co-conspirators in connection with the production and sale of DRAM affected
25 by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade
26 and commerce.

27 (e) Acts in furtherance of this conspiracy were carried out within the Northern
28 District of California. Furthermore, DRAM affected by this conspiracy was sold by one or more

1 of the conspirators to customers in this District.

2 **POSSIBLE MAXIMUM SENTENCE**

3 5. Defendant understands that the maximum penalty which may be imposed against
4 him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

5 (a) a term of imprisonment for three (3) years (15 U.S.C. § 1);
6 (b) a fine in an amount equal to the greatest of (1) \$350,000, (2) twice the
7 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary
8 loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b)
9 and (d)); and

10 (c) a term of supervised release of one (1) year following any term of
11 imprisonment. If Defendant violates any condition of supervised release, Defendant could be
12 imprisoned for the entire term of supervised release (18 U.S.C. § 3559(a)(5); 18 U.S.C. §
13 3583(b)(3) and (e)(3); and U.S.S.G. § 5D1.2(a)(3)).

14 6. In addition, Defendant understands that:

15 (a) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay restitution
16 to the victims of the offense; and

17 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court is
18 required to order Defendant to pay a \$100.00 special assessment upon conviction for the charged
19 crime.

20 **SENTENCING GUIDELINES**

21 7. Sentencing for the offense to be charged will be conducted pursuant to
22 the U.S.S.G. Manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, the
23 United States agrees that self-incriminating information that Defendant provides to the United
24 States pursuant to this Plea Agreement will not be used to increase the volume of affected
25 commerce attributable to Defendant or in determining Defendant's applicable sentencing
26 guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b). The United States and
27 Defendant agree that the U.S. Sentencing Guidelines may be applied and, if applied, the
28 applicable sentencing guidelines is U.S.S.G. § 2R1.1 with a base level of 10, a volume of

1 commerce adjustment of plus 7 pursuant to U.S.S.G. § 2R1.1(b)(2)(G), for a total of 17; less a 3-
2 level adjustment for timely acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a) and (b),
3 for a total offense level of 14. Further, the United States agrees to make a motion for downward
4 departure pursuant to Paragraph 10 below and U.S.S.G. § 5K1.1, recommending that Defendant
5 be sentenced to the sentence agreed to below.

6 **SENTENCING AGREEMENT**

7 8. (a) Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and Defendant
8 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
9 Court impose, a sentence requiring that Defendant pay to the United States a criminal fine of
10 \$250,000, pursuant to 15 U.S.C. § 1, payable in full before the thirtieth (30th) day after the date
11 of judgment; a period of incarceration of 120 days; no order of restitution; and no period of
12 supervised release (“the recommended sentence”). Defendant understands that this Court will
13 order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G.
14 § 5E1.3 in addition to any fine imposed.

15 (b) The United States will not object to Defendant’s request that the Court
16 make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that
17 Defendant be assigned to a Federal Minimum Security Camp (specifically to FPC Nellis, the
18 Nellis Federal Prison Camp, near Las Vegas, Nevada) to serve his sentence of imprisonment and
19 that Defendant be released on his own personal recognizance following the imposition of
20 sentence to allow him to self-surrender to the designated institution on a specified date.

21 (c) The parties also agree that if the U.S. Sentencing Guidelines do not apply,
22 this Court in exercising its unfettered discretion within the statutory limits for this offense should
23 impose the same recommended sentence. Nothing in this Agreement shall preclude the United
24 States from making a motion to reduce Defendant’s sentence pursuant to Fed. R. Crim. P. 35(b)
25 or otherwise, if circumstances so warrant.

26 9. The United States and Defendant agree that, pursuant to U.S.S.G. § 5E1.1(b),
27 Defendant should not be ordered to pay restitution in light of the civil cases filed against
28 Infineon NA, Defendant’s employer, including *In re DRAM Antitrust Litigation*, No. M-02-

1 1486-PJH, MDL No. 1486, in the United States District Court, Northern District of California,
2 and *DRAM Cases*, No. CJC-03-004265, in the Superior Court, San Francisco, California, which
3 potentially provide for a recovery of a multiple of actual damages.

4 10. The United States and Defendant agree that the applicable sentencing
5 guidelines fine and incarceration ranges exceed the fine and term of imprisonment contained in
6 the recommended sentence set out in Paragraph 8 above. Subject to the full and continuing
7 cooperation of Defendant, as described in Paragraph 13 of this Plea Agreement, and prior to
8 sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G.
9 § 5K1.1, for a downward departure from the guidelines sentence in this case. The motion for
10 downward departure is based on cooperation that has already occurred and any additional
11 cooperation that may occur prior to sentencing. Furthermore, the United States will request that
12 this Court impose the fine and term of imprisonment contained in the recommended sentence set
13 out in Paragraph 8 of this Plea Agreement because of Defendant's substantial assistance in the
14 government's investigation and prosecutions of violations of federal criminal law in the DRAM
15 industry.

16 11. The United States and Defendant jointly submit that this Plea Agreement, and the
17 record that will be created by the United States and Defendant at the plea and sentencing
18 hearing, will provide sufficient information concerning Defendant, the offense charged in this
19 case, and Defendant's role in the offense to enable the meaningful exercise of sentencing
20 authority by this Court under 18 U.S.C. § 3553. The United States will not object to Defendant's
21 request that this Court accept Defendant's plea of guilty and impose sentence on an expedited
22 schedule as early as the date of arraignment, based upon the record provided by Defendant and
23 the United States, under the provisions of Rule 32(b)(1), Fed. R. Crim. P., U.S.S.G. § 6A1.1, and
24 Criminal Local Rule 32-1(b). The Court's denial of the request to impose sentence on an
25 expedited schedule will not void this Plea Agreement. Should the Court deny Defendant's
26 request to impose sentence on an expedited schedule, the United States agrees that, at the initial
27 appearance or arraignment, it will recommend the release of Defendant on his personal
28 recognizance and without bond, under 18 U.S.C. § 3142, without restriction as to travel, pending

1 the sentencing hearing in this case.

2 12. The United States and Defendant understand that this Court retains complete
3 discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea
4 Agreement.

5 (a) If this Court does not accept the recommended sentence, the United States
6 and Defendant agree that this Plea Agreement, except for Paragraph 12(b) below, shall be
7 rendered void. Neither party may withdraw from this Plea Agreement, however, based on the
8 type or location of the correctional facility to which Defendant is assigned to serve his sentence.

9 (b) If this Court does not accept the recommended sentence, Defendant will
10 be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If Defendant withdraws
11 his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of
12 any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or
13 made in the course of plea discussions with an attorney for the government shall not be
14 admissible against Defendant in any criminal or civil proceeding, except as otherwise provided
15 in Fed. R. Evid. 410. In addition, should the Court not accept the Plea Agreement and should
16 Defendant then withdraw his guilty plea, the United States agrees that it will dismiss the
17 Information, without prejudice to the United States' right to indict Defendant on the charge
18 contained in the Information and any other related charges. In addition, Defendant agrees that, if
19 he withdraws his guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of
20 limitations period for any Relevant Offense, as defined in Paragraph 14 below, will be tolled for
21 the period between the date of the signing of the Plea Agreement and the date Defendant
22 withdrew his guilty plea or for a period of sixty (60) days after the date of the signing of the Plea
23 Agreement, whichever is greater.

24 **DEFENDANT'S COOPERATION**

25 13. Defendant will cooperate fully and truthfully with the United States in the
26 prosecution of this case, the conduct of the current federal investigation of violations of federal
27 antitrust and related criminal laws involving the manufacture or sale of DRAM, any other federal
28 investigation resulting therefrom, and any litigation or other proceedings arising or resulting

1 from any such investigation to which the United States is a party ("Federal Proceeding"). The
2 ongoing, full, and truthful cooperation of Defendant shall include, but not be limited to:

3 (a) producing in the United States and at other mutually agreed-upon
4 locations all documents, including claimed personal documents, and other materials, wherever
5 located, in the possession, custody, or control of Defendant, requested by attorneys and agents of
6 the United States;

7 (b) making himself available for interviews in the United States and at other
8 mutually agreed-upon locations, not at the expense of the United States, upon the request of
9 attorneys and agents of the United States;

10 (c) responding fully and truthfully to all inquiries of the United States in
11 connection with any Federal Proceeding, without falsely implicating any person or intentionally
12 withholding any information, subject to the penalties of making false statements (18 U.S.C. §
13 1001) and obstruction of justice (18 U.S.C. § 1503);

14 (d) otherwise voluntarily providing the United States with any material or
15 information, not requested in (a) - (c) of this paragraph, that he may have that is related to any
16 Federal Proceeding; and

17 (e) when called upon to do so by the United States in connection with any
18 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United
19 States, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621),
20 making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623),
21 contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. § 1503).

22 **GOVERNMENT'S AGREEMENT**

23 14. Subject to the full, truthful, and continuing cooperation of Defendant, as
24 described in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the guilty
25 plea called for by this Plea Agreement and the imposition of the recommended sentence, the
26 United States will not bring further criminal charges against Defendant for any act or offense
27 committed before the date of this Plea Agreement that was undertaken in furtherance of an
28 antitrust conspiracy involving the manufacture or sale of DRAM or undertaken in connection

1 with any investigation of such a conspiracy (“Relevant Offense”). The nonprosecution terms of
2 this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or
3 securities laws, or to any crime of violence.

4 15. Defendant understands that he may be subject to administrative action by federal
5 or state agencies other than the United States Department of Justice, Antitrust Division, based
6 upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way
7 controls whatever action, if any, other agencies may take. However, the United States agrees
8 that, if requested, it will advise the appropriate officials of any governmental agency considering
9 such administrative action of the fact, manner, and extent of the cooperation of Defendant as a
10 matter for that agency to consider before determining what administrative action, if any, to take.

11 **REPRESENTATION BY COUNSEL**

12 16. Defendant has reviewed all legal and factual aspects of this case with his attorney
13 and is fully satisfied with his attorney’s legal representation. Defendant has thoroughly reviewed
14 this Plea Agreement with his attorney and has received satisfactory explanations from his
15 attorney concerning each paragraph of this Plea Agreement and alternatives available to
16 Defendant other than entering into this Plea Agreement. After conferring with his attorney and
17 considering all available alternatives, Defendant has made a knowing and voluntary decision to
18 enter into this Plea Agreement.

19 **VOLUNTARY PLEA**

20 17. Defendant’s decision to enter into this Plea Agreement and to tender a plea of
21 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
22 or representations other than the representations contained in this Plea Agreement. The United
23 States has made no promises or representations to Defendant as to whether the Court will accept
24 or reject the recommendations contained within this Plea Agreement.

25 **VIOLATION OF PLEA AGREEMENT**

26 18. Defendant agrees that, should the United States determine in good faith, during
27 the period that any Federal Proceeding is pending, that Defendant has failed to provide full and
28 truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has otherwise

1 violated any provision of this Plea Agreement, the United States will notify Defendant or his
2 counsel in writing by personal or overnight delivery or facsimile transmission and may also
3 notify his counsel by telephone of its intention to void any of its obligations under this Plea
4 Agreement (except its obligations under this paragraph), and Defendant shall be subject to
5 prosecution for any federal crime of which the United States has knowledge including, but not
6 limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement.
7 Defendant may seek Court review of any determination made by the United States under this
8 Paragraph to void any of its obligations under the Plea Agreement. Defendant agrees that, in the
9 event that the United States is released from its obligations under this Plea Agreement and brings
10 criminal charges against Defendant for any Relevant Offense, the statute of limitations period for
11 such offense will be tolled for the period between the date of the signing of this Plea Agreement
12 and six (6) months after the date the United States gave notice of its intent to void its obligations
13 under this Plea Agreement.

14 19. Defendant understands and agrees that in any further prosecution of him resulting
15 from the release of the United States from its obligations under this Plea Agreement based on
16 Defendant's violation of the Plea Agreement, any documents, statements, information,
17 testimony, or evidence provided by him to attorneys or agents of the United States, federal grand
18 juries, or courts, and any leads derived therefrom, may be used against him in any such further
19 prosecution. In addition, Defendant unconditionally waives his right to challenge the use of such
20 evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

21 **ENTIRETY OF AGREEMENT**

22 20. This Plea Agreement constitutes the entire agreement between the United States
23 and Defendant concerning the disposition of the criminal charge in this case. This Plea
24 Agreement cannot be modified except in writing, signed by the United States and Defendant.

25 21. The undersigned attorneys for the United States have been authorized
26 by the Attorney General of the United States to enter this Plea Agreement on behalf of the
27 United States.

28 ///

1 22. A facsimile signature shall be deemed an original signature for the
2 purpose of executing this Plea Agreement. Multiple signature pages are authorized for the
3 purpose of executing this Plea Agreement.

4
5 DATED: December 2, 2004

Respectfully submitted,

6 BY:

7
8 /s/

T. Rudd Corwin
Defendant
9
10 /s/

Counsel for Defendant
David P. Bancroft
Jeffrey C. Hallam
12 Richard J. Nelson
Sideman & Bancroft LLP
13 One Embarcadero Center, Eighth Floor
San Francisco, CA 94111
14 Tel: (415) 392-1960
Fax: (415) 392-0827
15
16
17
18
19
20
21
22
23
24
25
26
27
28

 /s/

Niall E. Lynch (CSBN 157959)
Eugene S. Litvinoff (CSBN 214318)
Nathanael M. Cousins (CSBN 177944)
U.S. Department of Justice
Antitrust Division
450 Golden Gate Avenue
Room 10-0101, Box 36046
Tel: (415) 436-6660
Fax: (415) 436-6687